INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Constitution and statutes involved	2
Statement	2
Argument	5
Conclusion	8
Appendix	9

CITATIONS

Cases:	
Board of Com'rs of Grady County v. *Broadwell*, 75 Okla. 9	4
Board of Com'rs, Love County v. *Ward*, 68 Okla. 287	4
Board of Com'rs of Tulsa County, Okla. v. *United States*, 94 F. (2d) 450	7
Bowling v. *United States*, 233 U. S. 528	6, 7
Broadwell v. *Board of Com'rs of Bryan County*, 88 Okla. 147, certiorari denied, 262 U. S. 750	4, 6
Broadwell v. *Board of Com'rs, Carter County*, 71 Okla. 162	4
Broadwell v. *Carter County*, 253 U. S. 25	4
Carpenter v. *Shaw*, 280 U. S. 363	3
Choate v. *Trapp*, 224 U. S. 665	3, 7
Cramer v. *United States*, 261 U. S. 219	7
Privett v. *United States* 256 U. S. 201	6, 7
Sunderland v. *United States*, 266 U. S. 226	6
United States v. *Board of County Commissioners*, 19 F. Supp. 635, affirmed 94 F. (2d) 450	5
United States v. *Candelaria*, 271 U. S. 432	6
United States v. *Heckman*, 224 U. S. 413	7
United States v. *Minnesota*, 270 U. S. 181	6
United States v. *Rickert*, 188 U. S. 432	6
United States v. *Sherburne Mercantile Co.*, 68 F. (2d) 155	7
Ward v. *Love County*, 253 U. S. 17	3, 4
Williams v. *Johnson*, 239 U. S. 414	7
Constitution and Statutes:	
Okla. Const., Art. X, sec. 6	3, 11
Act of June 28, 1898, Sec. ,29 30 Stat. 495	3, 9
Act of July 1, 1902, 32 Stat. 641	9
Act of June 16, 1906, 34 Stat. 267	3, 10
Act of May 27, 1908, 35 Stat. 312	3, 11

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 942

BRYAN COUNTY, STATE OF OKLAHOMA, AND THE BOARD OF COUNTY COMMISSIONERS OF BRYAN COUNTY, OKLAHOMA, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The District Court delivered no opinion. The opinion of the Circuit Court of Appeals (R. 66–72) is reported in 123 F. (2d) 782.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 12, 1941 (R. 72–73). The petition for a writ of certiorari was filed February 11, 1942. The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the United States, having promised the enrolled members of the Choctaw Nation of Indians that their allotments of land should be nontaxable for 21 years, has a sufficient interest in the enforcement of its tax-exemption agreement to enable it to maintain suit in a federal court to recover state property taxes wrongfully exacted from unrestricted allottees, notwithstanding the fact that the allottees had previously assigned their tax claims to a third person whose suit in the state courts to recover such moneys was defeated by a plea of limitations.

CONSTITUTION AND STATUTES INVOLVED

The relevant provisions of the Act of June 28, 1898, 30 Stat. 495, 507, the Act of July 1, 1902, 32 Stat. 641, the Act of June 16, 1906, 34 Stat. 267, the Oklahoma Constitution, Art. X, sec. 6, and the Act of May 27, 1908, 35 Stat. 312, are set forth in the Appendix, *infra,* pp. 9–12.

STATEMENT

In 1905 and 1908 Minnie Brewer and Lake Brewer, enrolled members of the Choctaw Nation, received homestead and surplus allotment patents (R. 13–22) to certain lands which the United States, in the Atoka Agreement of 1897 (ratified by the Curtis Act of 1898), promised should be nontaxable for 21 years after the patents issued, while title remained in the original allottees.

Section 29 of the Act of June 28, 1898, 30 Stat. 495, 507. In spite of the provisions contained in the Oklahoma Enabling Act and Constitution preserving this tax immunity (Act of June 16, 1906, 34 Stat. 267; Okla. Const., Art. X, sec. 6), the taxing officials of Oklahoma placed all unrestricted allotments on the tax rolls, and subsequently collected taxes from hundreds of Indian allottees, including $223.47 from the Brewers (R. 7–8, 26–29, 35–37), in the belief that the Act of May 27, 1908, 35 Stat. 312, removing restrictions on alienation and purporting to end the tax exemption, was effective to subject the lands to taxation.

In *Choate* v. *Trapp,* 224 U. S. 665,[1] this Court held on a bill for injunction that exemptions from taxation and restrictions on alienation were "two separate and distinct subjects", that the Indian allottees, by reason of the tax-exemption feature of the Atoka Agreement, had acquired a vested right protected by the Fifth Amendment, good against both the United States and the State of Oklahoma, and that the exemption survived the 1908 statute. Notwithstanding this adjudication, the taxing authorities of Oklahoma refused to refund the taxes which they had theretofore collected from the Indian allottees.

There followed a series of attempts to recover such taxes by court action: some suits were brought

[1] For subsequent decisions to the same effect, see *Ward* v. *Love County,* 253 U. S. 17; *Carpenter* v. *Shaw,* 280 U. S. 363.

by the allottees themselves, other suits by one George R. Broadwell, to whom a great number of Indians (including the Brewers) had assigned their tax claims, and finally several suits (including the present litigation) by the United States. The first attempts by the allottees and by Broadwell failed in the courts of Oklahoma on the ground that the taxes had been voluntarily paid. *Board of Com'rs, Love County* v. *Ward,* 68 Okla. 287; *Broadwell* v. *Board of Com'rs, Carter County,* 71 Okla. 162; *Board of Com'rs of Grady County* v. *Broadwell,* 75 Okla. 9. This Court reversed, holding that a federal right was involved, that the taxes were in reality paid under compulsion, and that "money got through imposition" may be recovered back. *Ward* v. *Love County,* 253 U. S. 17; *Broadwell* v. *Carter County,* 253 U. S. 25. The question whether such claims were not in fact barred by the state statute of limitations was, however, left open. And when subsequent suits were brought (including a suit by Broadwell to recover on behalf of the Brewers), they were defeated by the plea of limitations. *Broadwell* v. *Board of Com'rs of Bryan County,* 88 Okla. 147, certiorari denied, 262 U. S. 750.

It thus became necessary for the United States itself to take steps to recover the taxes in those instances where they had not yet been refunded, if the tax-exemption guaranty contained in the Atoka Agreement was to be thoroughly enforced. De-

mand for refund was accordingly made on the taxing authorities of counties which had collected the taxes in violation of the Atoka Agreement and had not refunded the amounts paid by the Indians on their land. Tulsa County having refused repayment in one case, the United States instituted court proceedings. Recovery was allowed in *United States* v. *Board of County Commissioners,* 19 F. Supp. 635 (N. D. Okla.), affirmed, 94 F. (2d) 450 (C. C. A. 10). In 1939 the Government brought a similar suit against Bryan County to recover the $223.47 exacted by the County from the Brewers during 1908, 1909, 1910, and 1911 (R. 5–9). Again the United States had judgment (R. 58–59) and the Circuit Court of Appeals for the Tenth Circuit affirmed (R. 72–73). The county officials now request certiorari.

ARGUMENT

Petitioners contend,[2] in effect (Pet. 6, 14, 17–20), that the United States cannot maintain a suit in its own behalf and on behalf of Indian allottees to enforce tax exemptions guaranteed by it to enrolled members of the Choctaw Nation by the Atoka Agreement of 1897, which was ratified by section 29 of the Curtis Act of June 28, 1898, 30 Stat. 495, 507.

[2] They concede that the lands in question were exempt from taxation during the years 1908–1911, and, accordingly, that the collection of $223.47 from the Brewers was illegal (Pet. 3).

The contention that the United States has no standing in its own right contradicts repeated decisions of this Court. The Government has the right and the duty, as the court below observed (R. 70–71), to see that its consensual obligations are properly discharged and its declared policies fully respected; to this end it may invoke the aid of its courts "in removing unlawful obstacles to the fulfillment of its obligations." *United States* v. *Minnesota,* 270 U. S. 181, 194; *United States* v. *Rickert,* 188 U. S. 432, 434. The interest of the United States in seeing that its obligations and policies are observed "is one which is vested in it as a sovereign." *United States* v. *Minnesota,* 270 U. S. 181, 194. That interest cannot be prejudiced by an assignment to which the United States has not consented nor impaired by a judgment in a proceeding to which it was not a party. *United States* v. *Candelaria,* 271 U. S. 432, 444; *Sunderland* v. *United States,* 266 U. S. 226, 232; *Privett* v. *United States,* 256 U. S. 201, 204; *Bowling* v. *United States,* 233 U. S. 528, 534. Accordingly, the Brewers' assignment and the decision in *Broadwell* v. *Board of Com'rs of Bryan County,* 88 Okla. 147, certiorari denied, 262 U. S. 750, raise no bar to a suit by the United States to recover property taxes collected by the county in violation of the Atoka Agreement.

Petitioners also deny that the Government may bring such suits on behalf of Indians whose allot-

ments are no longer restricted against alienation (Pet. 21–26). As this Court has stated, exemptions from taxation and restrictions on alienation are "two separate and distinct subjects." *Choate* v. *Trapp,* 224 U. S. 665, 673; *Williams* v. *Johnson,* 239 U. S. 414, 420. Vested tax exemptions therefore continue even after restrictions on alienation are removed. *Choate* v. *Trapp,* 224 U. S. 665. And the duty of the United States to see its guaranty of tax immunity respected is a continuing obligation although the allottees have become citizens, restrictions on alienation have been removed, and the Indians have been otherwise discharged from the relation of wardship. *Cramer* v. *United States,* 261 U. S. 219, 232; *United States* v. *Heckman,* 224 U. S. 413, 437; *Board of Com'rs of Tulsa County, Okla.* v. *United States,* 94 F. (2d) 450, 452 (C. C. A. 10); *United States* v. *Sherburne Mercantile Co.,* 68 F. (2d) 155, 158 (C. C. A. 9).

Finally, it is not material to petitioners what disposition the United States makes of the tax moneys which it recovers. Petitioners' suggestion (Pet. 7, 20) that the judgment herein will only enure to the benefit of George R. Broadwell, the assignee, is in any event devoid of merit. The United States is not bound to recognize the assignment. *Privett* v. *United States,* 256 U. S. 201; *Bowling* v. *United States,* 233 U. S. 528.

CONCLUSION

The decision of the Circuit Court of Appeals is in accord with the applicable decisions of this Court, raising no new question of substance, and presents no conflict. It is therefore respectfully submitted that the petition should be denied.

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